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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,591	09/27/2001	Bard Lotveit	CU-2651 RJS	2682

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EXAMINER	
MAKI, STEVEN D	

ART UNIT	PAPER NUMBER
1733	

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/937,591	LOTVEIT, BARD
	Examiner	Art Unit
	Steven D. Maki	1733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *9-17-04, 10-5-04, 10-18-04*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4-8 and 10-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,4-8, 10-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☒ Interview Summary (PTO-413) Paper No(s)/Mail Date. *051904*.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1) A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed 9-17-04 in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10-5-04 and 10-18-04 have been entered.

2) Claims 1-2, 4-8 and 10-22 are objected to because of the following informalities:

(A) The print of the claims is not clear. In particular, parts of some of the words in claims 1-2, 4-8 and 10-22 along the right margin are missing. Examples: Claim 1 line 2 recites "sice" instead of --side--. Claim 1 next to last line recites "be ng" instead of --being--. Claim 6 line 2 recites "cf" instead of --of--. Claim 8 line 3 recites "he" instead of --the--. Claim 13 line 1 recites "mu tifilament" instead of --multifilament--. Claim 20 recites "possible of lhat" instead of --possible of that--.

(B) In claim 20 "when then the device is fitted on the wheel" should be --when the device is fitted on the wheel--.

(C) In claim 20 line 18, --,-- should be inserted after "passing over to the inner side surface of the wheel".

Appropriate correction is required.

3) The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Incorporation of "the outer side portion radially extends from an internal circumference of the belt toward the center of the wheel over a length which

equals at least 17% of the largest internal diameter of the belt" (claim 22) into the specification. Support for this description is found in original claims 2 and 6 as explained by applicant on page 3 of the response filed 9-17-04.

4) Applicant is advised that should claim 1 be found allowable, claims 2, 6 and 22 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claims 2, 6 and 22 have the same scope as claim 1 since no additional limitation of the device is being claimed. For example, the description of the internal circumference of the belt being 4-10% larger than the outer circumference of the wheel in claim 2 fails to change the scope of claim 1 since the wheel is not part of the device (the wheel relates to the intended use of the device). See page 2 of response filed 9-17-04.

Claims 2, 6 and 22 have not been objected to as failing to further limit in view of the following statements in MPEP 608.01(n): "The test for a proper dependent claim under the fourth paragraph of 35 U.S.C. 112 is whether the dependent claim includes every limitation of the claim from which it depends. The test is not one of whether the claims differ in scope." (emphasis added, MPEP 608.01(n), page 600-80, Rev. 2, May 2004).

5) The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6) Claims 1-2, 4-8 and 10-22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In claims 1 and 20, the subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention is the subject matter of "the outer side portion being shaped and configured so that the wheel cannot pass through said outer side portion". This subject matter does not constitute new matter since the original disclosure describes "... the outer side portion of the device being shaped so that it will not be able to jump over the wheel to the inner side thereof." (page 2 of specification, emphasis added). However, the description of "cannot pass through" is **apparently unconditional**. This interpretation is consistent with the following statement by applicant: "The configuration of the outer side portion of the device in the present application is such that there is no possibility for the wheel to pass therethrough, whether or not an elastic member is used." (page 3 of response filed 9-17-04, emphasis added). The original disclosure fails to teach how to make a device having an outer side portion being shaped and configured so that the wheel cannot pass through the outer side portion under all conditions. One of ordinary skill in the art

would readily understand that the wheel can pass through the outer side portion (which may have an opening as shown in figure 2A) under some conditions such as when (1) sufficiently large force is applied, (2) the tire is completely deflated, etc.

7) The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8) The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Wollheim

9) **Claims 1-2, 4, 6-7 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wollheim (US 1910416) in view of Haye (US 3770035).**

Wollheim, directed to a cover adapted to fit over the fronts of different sized tires, discloses a tire cover having an "endless annular belt", a "flexible side portion" having an elastic member (elastic band 15) and "flexible outer side portion". See figures 1-4. The front cover may be a solid sheet or may have a suitable opening. Since the front cover (outer side portion) is a solid sheet, the wheel cannot pass through the outer side portion. Wollheim does not specifically recite that the cover is made of fabric. However, it would have been obvious to make Wollheim's tire cover out of fabric (textile material) since (1) Wollheim teaches that the cover should be flexible so that it can be folded into

small and compact package (page 1 lines 55-60) and (2) Haye teaches that a fabric cover for wheels can be easily folded into a small volume (col. 1 lines 48-50). The description of "for fitting a device on a vehicle wheel, resting against a road surface, to increase friction between the wheel and the road surface during winter conditions" relates to intended use and fails to require structure and/or material different from that suggested by the above applied prior art; it being noted that "to increase friction" is a relative expression. With respect to claim 7, it would have been obvious to provide the claimed straps on Wollheim's device since it is taken as well known / conventional per se to provide straps on a tire cover to facilitate mounting / demounting of the tire cover. With respect to claim 11, it would have been obvious to use woven polyamide as the fabric suggested by Haye since flexible woven polyamide (e.g. nylon fabric for a shower curtain) is taken as well known / conventional fabric per se.

Krueger

10) **Claims 1-2, 6 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Krueger (US 2682907).**

On page 2 of the response filed 1-21-04, applicant describes Krueger as follows: "Krueger discloses a device having an annular belt and first and second flexible side portions. Both side portions are tightened against the wheel by an elastic member. This allows the device to be affixed to the wheel by passing either of the first or second side portions over the wheel to the inside."

As to claim 1, the claimed device is anticipated by the traction increasing means of Krueger. The claimed belt, inner side portion and outer side portion read on the

endless annular elongated member 12 of flexible material such as canvas or the like. The description of "textile material" reads on canvas. The claimed elastic member reads on annular coil springs.

With respect to the subject matter of "the outer side portion being shaped and configured so that the wheel cannot pass through said outer side portion", Krueger satisfies this subject matter. See (1) figures 1 and 2, (2) Krueger's teaching that the device "may be conveniently and effectively installed in position on the tire to substantially increase the traction thereof while traveling over mud, snow, ice or other slippery surfaces" (col. 1 lines 5-8, emphasis added) and (3) Krueger's teaching that "the side edges of the member 12 being provided with annular hems 18 having annular coil springs 20 disposed therein for the purpose of contracting the member 12 and sustaining the same in position on the tire" (col. 1 lines 47-52, emphasis added).

As to claim 2, the description of "the internal circumference of the belt is 4-10% larger than the outer circumference of the wheel" fails to require an internal circumference different from that disclosed by Krueger. Claim 2 fails to exclude fitting the device on a wheel wherein the internal circumference of the device is the same as the wheel.

Claim 6 fails to require device structure different from that disclosed by Krueger.

Claim 22 fails to require device structure different from that disclosed by Krueger.

11) **Claims 1-2, 4, 6-8 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krueger (US 2682907) and optionally in view of Wollheim (US 1910416).**

Krueger is considered to anticipate claim 1. In any event: It would have been obvious to provide the device of US Patent 2,682,907 such that it can function as a traction increasing means for tire as intended and thereby have an outer side portion shaped and configured so that the wheel "cannot pass through" the outer side portion in view of (1) Krueger's teaching that the device "may be conveniently and effectively installed in position on the tire to substantially increase the traction thereof while traveling over mud, snow, ice or other slippery surfaces" (col. 1 lines 5-8, emphasis added) and (2) Krueger's teaching that "the side edges of the member 12 being provided with annular hems 18 having annular coil springs 20 disposed therein for the purpose of contracting the member 12 and sustaining the same in position on the tire" (col. 1 lines 47-52, emphasis added). As to "elastic member", it would have been obvious to use an "elastic member" instead of a contractable annular coil spring 20 since Wollheim, directed to a tire cover which is structurally similar to the tire traction increasing means of Krueger, teaches that an elastic band is an alternative to a coiled metal spring for exerting tension for holding a cover on a tire.

As to claim 2, the description of "the internal circumference of the belt is 4-10% larger than the outer circumference of the wheel" fails to require an internal circumference different from that disclosed by Krueger. Claim 2 fails to exclude fitting the device on a wheel wherein the internal circumference of the device is the same as the wheel.

As to claim 4, the limitation of the outer side portion covering substantially the outer side of the wheel would have been obvious in view of Wollheim's teaching that a tire cover, if desired my be a solid sheet (covering that entire side of the tire).

As to claim 6, the limitation of the outer side portion having at least one opening would have been obvious since the traction increasing means of Krueger has an opening on each side.

As to claim 7, it would have been obvious to provide the claimed straps on Krueger's device since it is taken as well known / conventional per se to provide straps on a tire cover to facilitate mounting / demounting of the tire cover.

As to claim 8, the limitation therein would have been obvious since (1) Wollheim, as noted above, suggests using an elastic band and (2) "a rubber elastic material which is covered by a spun, woven or knitted substantially inelastic thread material, the thread material limiting the extensibility of the elastic member" is taken as a well known / conventional rubber band per se. The suggestion to use a rubber band in Krueger comes from Wollheim instead of the official notice.

As to claim 22, it would have been obvious to provide Krueger's outer side portion with the claimed length in view of Wollheim's teaching to extend the side portions along the sidewalls of the tire.

12) **Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Krueger (US 2682907) and optionally Wollheim (US 1910416) as applied above and further in view of Japan '503 (JP 1-249503).**

As to the "internal circumference", it would have been obvious to *use* the endless annular traction increasing means of Krueger on a tire such that the internal circumferential of the endless annular traction increasing means is 4-10% larger than the outer circumference of the tire in view of Japan '503's suggestion to apply an endless annular tire anti-slip band to a tire such that a gap is formed between the internal surface of the endless annular tire anti-slip band and the outer surface of the tire to prevent slipping of the tire and damaging of the road surface.

13) **Claims 5 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krueger (US 2682907) and optionally Wollheim (US 1910416) as applied above and further in view of German '291 (DE 2355291).**

As to claim 5, it would have been obvious to use the claimed netting as the textile for the traction increasing means (an anti-slip device) since German '291 suggests using a netting for an anti-slip device.

As to claim 21, it would have been obvious to use the claimed netting as the textile for the traction increasing means (an anti-slip device) since (a) German '291 suggests using a netting for an anti-slip device wherein the netting comprises polyester threads and (b) a netting comprising PVC coated 1100dtex polyester multifilament material" is taken as a well known / conventional netting per se. The net opening of 2-7 mm would have been obvious and could have been determined without undue experimentation in view of German '291's teaching to obtain the result of anti slip using a netting.

14) **Claims 10-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krueger (US 2682907) and optionally Wollheim (US 1910416) as applied above and further in view of at least one of Riggs et al (US 5439727), Peterson (US 3335776) and German '291 (DE 2355291).**

As to claims 10-19, it would have been obvious to use a woven textile for Krueger's traction increasing means since (a) Krueger broadly suggests using a textile for the traction increasing means (canvas is merely exemplary) and (b) it is known in the tire art to use a woven textile for covering the tread of a tire as evidenced by at least one of Riggs et al, Peterson and German '291. Riggs et al discloses a woven polyamide having a water resistant coating for a tire cover so that it readily conforms to the surface of the tire. Peterson discloses using a woven fabric including cross wide fibers for a traction improving means. German '291 discloses weaving threads to form a netting for a anti-slip device. As to claims 10, 11 and 15, Riggs et al suggests a textile comprising woven polyamide and being coated with a water resistant coating - it being well known to form water resistant material from plastic / polymer. The use of two layers as an alternative to one layer is suggested by Krueger. As to claims 12 and 13, German '291 suggests using polyester threads. As to claim 14, the limitation therein would have been obvious since it is taken as well known / conventional per se to use a colored layer beneath a ground contacting layer to indicate wear; it being noted again that the use of two layers as an alternative to one layer is suggested by Krueger. As to claims 16 and 17, it would have been obvious to interconnect the textile layers using a yarn since it is taken as well known / conventional per se in the textile art to hold textile

layers together using a yarn - the use of two textile layers for a traction increasing means is suggested by Krueger. As to claims 18 and 19, note Riggs et al suggestion to coat the woven polyamide with water resistant material - low friction being a relative term and it being taken as well known per se that water resistant materials include silicone rubber, PVC.

15) **Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Krueger (US 2682907) and optionally Wollheim (US 1910416) as applied above and further in view of Asano (WO 86/00579) and Bowler (US 3007506).**

As to claim 20, it would have been obvious to fit Krueger's traction increasing device on a wheel (tire) as claimed since: (1) Krueger teaches applying the endless annular traction increasing device on a tire so that it can increase traction of the tire and (2) it is well known in the tire art to facilitate fitting of a traction device on a tire by using rotation of the tire as evidenced by Asano and Bowler.

Remarks

16) Applicant's arguments with respect to claims 1-2, 4-8 and 10-22 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed 9-17-04 have been fully considered but they are not persuasive.

With respect to Krueger, applicant refers to "the arguable effectiveness of that arrangement while driving". No unexpected results over Krueger have been shown.

17) No claim is allowed.

18) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven D. Maki whose telephone number is (571) 272-1221. The examiner can normally be reached on Mon. - Fri. 7:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on (571) 272-1156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Steven D. Maki
December 2, 2004

STEVEN D. MAKI 12-2-04
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